IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATIONS No 1464 to 1466 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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Versus

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Appearance:

1. Civil Revision Application No. 1464 of 2001

MR RR TRIVEDI for Petitioner No. 1

MR BHAVESH P TRIVEDI for Petitioner No. 1

..... for Respondent No. 1-2/2

NOTICE SERVED for Respondent No. 3

Mr H N Sompura, AGP for Respondent No. 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 18/07/2002

ORAL (COMMON) JUDGEMENT

This is a revision application filed by the

petitioner-original plaintiff challenging the order dated 9.8.2001 recorded by the learned Civil Judge (SD) Gondal, below application Exh.34 submitted by the original plaintiff for issuing certificate for refund of court fees. It is a matter of record that the parties had settled the disputes out of the Court. The three suits being Special Civil Suits No. 167/95, 1/96 and 2/96 were disposed of resulting in consent decree. The Court had also passed an order for issuing certificate for refund of court fees. However, subsequently, the petitioner applied for issuance of certificate and at that time the learned trial Judge rejected the said application stating that the suit was disposed of on 14.9.1998 and the refund certificate was applied for on 21.6.2001 and, therefore, the learned trial Judge dismissed the said application of the petitioner-original plaintiff. Feeling aggrieved by the said order, the petitioner-original plaintiff has filed these three revision applications.

2. Rule was issued but the respondent-original defendant did not appear. It appears that notice was issued to the State Government and Mr H N Sompura, learned AGP appears on behalf of the State. On hearing the learned Advocates for the parties, it is clear that though the application for issuing refund certificate was made late, nevetheless, it is a matter of record that the Court itself had passed an order for issuing certificate for refund of court fees. Even section 43 of the Bombay Court fees Act, 1959 makes it clear that when any suit pending in the Court is settled by agreement by the parties before any evidence is recorded, half of the amount of the fees paid by the plaintiff on the plaint may be refunded to him by the Court. Therefore, it is an obligation on the part of the court to pass order and to issue certificate for refund of court fees. When the order was passed at the first instance, there was no necessity for the petitioner-plaintif to file application for getting refund certificate. Therefore, even if the application for refund certificate was filed late, it could not be said that there was bar of limitation. In that view of the matter, the order passed by the learned Judge in each case is against the provisions of law and, therefore, it is illegal on the face ot it.

3. For the foregoing reasons, these revision applications are allowed. The orders passed by the learned trial Judge are set aside. The trial court is directed to issue certificate for refund of court fees in accordance with the provisions made under Section 43 of the Bombay Court Fees Act, 1959.

Rule is made absoslute in each matter. Direct Service is permitted.

18.7.02 [D P Buch, J.]
msp